

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 492 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1-5 No

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JIVANLAL S KANSARA

Versus

DINESH N KANSARA

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Appearance:

MR KV SHELAT for Petitioner

MR SB VAKIL for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/04/98

ORAL JUDGEMENT

1. This revision application is under Section 29(2) of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act) against judgement and decree dated 16.3.1981 passed by the appellate Bench of Small Causes Court at Ahmedabad whereby the learned judge upheld the decree of eviction dated 31.12.1979 passed by the judge Small Causes Court in H.R.P. Suit No. 1531 of 1974.

2. The plaintiff respondent filed suit for eviction of the petitioner tenant from the suit premises namely ground floor of a house bearing survey No. 1673 Census No. 870 in the city of Ahmedabad on the ground that the plaintiffs requires the possession of the suit premises for their bona fide and personal use and further that the defendant-tenant has acquired vacant possession of suitable residence. According to the plaintiff the premises were given on lease to defendant on monthly rent of Rs. 17/- and yearly rent of Rs. 200/-. The premise was given for the purpose of residence. The defendant filed written statement and took the plea that the premise was leased to him for residence as well as business. It was also stated that the defendant was doing Kansara business i.e. business of manufacturing vessel of copper and brass plates. He denied that the plaintiffs have reasonable and bona fide necessity of the premises.

3. The trial court after due trial held that demise premises was leased to the defendant for the purpose of residence. He also held that the plaintiffs required the possession of the suit premises for the reasonable and bona fide requirement. The issue with respect to the comparative hardship is also decided in favour of the plaintiffs. The trial court arrived at the conclusion that the defendant has acquired suitable residential accommodation. In view of this finding the trial court decreed the suit.

4. The tenant-petitioner being aggrieved of the said judgement and decree preferred an appeal to the appellate bench of the Small Causes Court at Ahmedabad which has been rejected by the impugned order dated 16.3.1981.

5 Mr. Shelat, learned counsel appearing for the petitioner contends that the learned judge has committed an error in holding that the premise was leased out only for residence. It is submitted that the defendant has been doing business of Kansara in the demise premise since 1934 i.e even prior to the execution of the first rent note Exh. 49 dated 28.6.1937 and second rent note Exh. 48 dated 5.9.1945. The learned counsel has also referred to the documentary evidence Exh. 106, Municipal bills Exh. 82 to 86 showing the payment of professional tax to the Municipal Corporation, Exh. 107 being the municipal licence for carrying on noisy trade in the suit premises, Exh. 57 certificate issued under the Shops and Establishment Act, Exh. 110 being the income-tax assessment order, books of accounts etc. to show that the petitioner tenant has been carrying on the kansara

business in the suit premises. It is also submitted that the rent note did not disclose the purpose for which the premise was rented out. A reading of the judgement of the courts below show that this aspect has been dealt with in great detail by both the courts. It is also not in dispute that the house is in a residential locality. There is also evidence on record that when the tenant-petitioner shifted from Danapity to the suit premises he was staying there with his wife and one daughter in the year 1934. The defendant stated that subsequent to shifting to the new premises his wife gave birth to three sons. From this evidence it is clear that the defendant vacated his residential premises at Danapity and came to reside to demised premises. Thus, if the tenant petitioner later on started kansara business in the demise premises, on that basis it cannot be said that the premise was rented out for the purpose of residence as well as business. Therefore, in my view the finding of fact arrived at by both the courts below that the premise was rented out for the residence does not call for any interference.

6. So far as the finding on the question of reasonable and bona fide necessity is concerned, it is not in dispute that the ground floor of demise premise Survey No. 1673 is leased out to the defendant and on the first floor there are two rooms and balcony. 8 members of the family of the plaintiffs are living in the said two rooms. On the other hand the defendant has acquired property No. 1671 and 1729. The defendant has a godown, office, telephone of his own in his own property in survey No. 1671, though the defendant has said that it is utilised as godown. The said godown has a big door colloquially known as Dehla. Some difficulty has been expressed with respect to the business in the said Dehla as the municipal corporation is not granting fresh licence for the noisy business. An indulgence was given by the order of this court dated 17.1.1998 to make a fresh application before the municipal corporation. However, the same has been rejected in view of the policy of the Corporation. The defendant in total has got 9 residential rooms in the said property bearing No. 1671 and 1729. He has got three married daughters with four children. The defendant has deposed that he takes meal with any of his sons but sleeps in the suit premises. It has also been suggested that he can very conveniently sleep with one of his son Ramesh. Considering this aspect in great detail the court has arrived at the conclusion that the necessity of the plaintiffs is reasonable and bona fide. The defendant has acquired alternative property. This finding does not call for any

interference by this court.

7. Lastly it is submitted that the defendant petitioner is residing in the suit premises for mor than 40 years. He is said to be 88 years of age. In view of this, a reasonable time may be given to vacate the premises.

8. In view of the aforesaid I find no merit in this revision application and the same is accordingly rejected. Rule discharged. However, the petitioner is granted two years time to vacate the premise on usual terms and conditions. The undertaking shall be filed within a period of two weeks since the tenancy has already been terminated and the continuance of the petitioner is only under the order of this court. It goes without saying that in any event the tenancy will not transmit to the legal heirs of the petitioner.

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